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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Establishment of an Improved Model)
For Predicting the Broadcast Television Field)
Strength Received at Individual Locations)
)
)
To: The Commission)

ET Docket No. 00-11

REPLY COMMENTS
OF THE
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

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Dated: March 14, 2000

REPLY COMMENTS

Pursuant to Sections 1.415 and 1.419 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §§ 1.415, 1.419, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Reply Comments in the above-captioned proceeding.¹ NRTC supports any and all efforts by the Commission to improve the Grade B predictive model. However, improvements in the predictive model, by themselves, will be insufficient to ensure receipt of an acceptable picture at the predicted location. To facilitate the delivery of distant network signals to truly unserved households, the Commission must promptly honor its statutory obligation to recommend modifications to the Grade B standard itself.

A. THE GRADE B STANDARD IS OUTDATED AND INADEQUATE.

1. In comments filed in this proceeding, NRTC generally supported the Commission's proposal to improve the current Grade B predictive model, Individual Location Longley-Rice ("ILLR"), by including environmental factors such as terrain, building structures and other land cover variations. Unfortunately for the rural consumer, the problem with improving the Grade B prediction model is that the Grade B standard itself is an outdated and inadequate measure of an acceptable picture.

2. The Commission developed the Grade B standard in the 1950's and has used it in

¹ 65 Fed. Reg. 4923 (Feb. 2, 2000).

a variety of contexts, many of which were not envisioned at the time it was created.² The primary purpose of creating the Grade B standard was to estimate the extent of a television station's coverage area.³ It was never intended for use in evaluating picture quality at a particular individual household.⁴

3. The specifications for Grade B service were established "so that a quality acceptable to the median observer is expected to be available for at least 90 percent of the time at the best 50 percent of receiver locations at the outer limits of Grade B service."⁵ The "acceptable quality" contemplated by the Commission was based on quality levels developed by the Television Allocation Study Organization ("TASO") over 50 years ago.⁶ However, "acceptable quality" levels have no doubt changed dramatically in the last 50 years with the advancement of new technologies and heightened consumer expectations.⁷

4. Using an analogy, no matter how much a mechanic tinkers with a Model T Ford, it is still a Model T. Consumers are not expected to drive 1930's cars – and they should not be expected to watch 1950's pictures. Many rural Americans who are predicted to receive a signal of Grade B intensity are actually receiving unacceptable television pictures under any modern

² *Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act; Part 73 Definition and Measurement of Signals of Grade B Intensity*, CS Docket No. 98-201, 14 FCC Rcd 2654 (adopted Feb. 1, 1999) ("SHVA Report and Order") at 15.

³ *Id.*

⁴ *Id.* at 33.

⁵ *Television Broadcast Service, Third Notice of Further Proposed Rule Making ("Third FNPRM")*, 16 FR 3072, 3075 (1951), adopted by *Television Broadcast service, Sixth Report and Order*, 41 FCC 148 (1952).

⁶ *SHVA Report and Order* at 34.

⁷ One commenter has suggested moving to a higher picture quality standard based on the TASO Grade 2 picture. Comments of Richard L. Biby, PE, at pp. 4-6.

standard. An "improved" Grade B prediction model will only better predict the ability of an individual household to receive a 1950's era signal of Grade B intensity, which in many cases is the same as receiving a signal of unacceptable quality. Improvements to the predictive model, therefore, will not have any real substantive effect unless the Commission also modifies the Grade B signal intensity standard itself and adopts an updated model reflecting current consumer expectations.

5. Congress recognized the potential shortfalls of the Grade B standard. While the scope of the Commission's Notice is limited to prescribing a better point-to-point predictive model, Congress also specifically directed the Commission to determine whether it may be appropriate to recommend, in a report to Congress, modifications to the Grade B intensity standard set forth in 47 C.F.R. § 73.683. Specifically, section 339(c) requires that:

For the purposes of identifying an unserved household under section 119(d)(10) of title 17, United States Code, within 1 year after the date of enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall conclude an inquiry to evaluate all possible standards and factors for determining eligibility for retransmission of the signals of network stations, and, if appropriate – (A) recommend modifications to the Grade B intensity standard for analog signals set forth in section 73.683(a) of its regulations (47 CFR 73.683(a)), or recommend alternative standards or factors for purposes of determining such eligibility.⁸

⁸ Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, PL 106-113, 113 Stat. 1501, Appendix I (1999) (codified in scattered sections of 17 and 47 U.S.C.), section 1008 (adding a new section 339 to Title III of the Communications Act of 1934, as amended).

Congress recognized that the Grade B standard may be inadequate, but in the Notice the Commission merely relegated this important statutory mandate to a footnote.⁹ More than three months after enactment of the SHVIA, the Commission has made no tangible progress is conducting the review of the Grade B standard that must be "concluded" by November 29, 2000.

6. NRTC urges the Commission to promptly initiate a separate inquiry into the appropriateness of the Grade B signal intensity standard for purposes of determining eligibility to receive distinct network signals by satellite, as required by Congress. There is no reason why the Commission cannot seek to improve the ILLR model in the instant proceeding at the same time that it conducts an inquiry into modifying or replacing the Grade B standard. Creating an improved signal intensity standard is necessary to ensure that countless unserved households are not wrongly deemed ineligible to receive distant network stations via satellite based on an outdated and defective standard.

7. In the *SHVA Report and Order*, the Commission declined to change the Grade B standard on the belief that it did not have authority to create a special Grade B standard solely for the purposes of the *SHVA*.¹⁰ Under the *SHVIA*, however, the Commission now has explicit authority --and the responsibility-- to review the need for modifications to the Grade B standard and to report the results to Congress in less than 8 months. Now is the time to exercise that authority and conduct the mandated inquiry. NRTC urges the Commission to act promptly to fulfill this clear Congressional mandate.

⁹ *Establishment of an Improved Model For Predicting the Broadcast Television Field Strength Received at Individual Locations*, FCC 00-17 (ET Docket No. 00-11, released January 20, 2000) at ¶ 1, Note 2.

¹⁰ *SHVA Report and Order* at 43.

B. THE COMMISSION'S WAIVER PROCESS IS NOT WORKING.

8. *SHVIA* permits subscribers who disagree with the ILLR model's prediction to submit a request for waiver, through the satellite carrier, to the local network television station. Thereafter, the local network television station has 30 days from the date that it receives the request for waiver either to grant or deny the request. If the local network television station does not issue a decision within 30 days, the request for a waiver is considered to be granted and the satellite company may provide the distant signals. If the local network television station denies the request for a waiver, the subscriber may submit a request to the satellite company to have a signal strength test performed at the subscriber's location to determine whether the subscriber's signal is at least Grade B intensity.

9. On February 15, 2000, NRTC received a letter from Deborah A. Lathen, Chief, Cable Services Bureau, which noted that the Commission had received "numerous and regular inquiries from consumers who have encountered problems with the waiver process." Similar letters were sent to other program distributors, satellite carriers, network affiliates and trade associations. On February 28, 2000, NRTC submitted its response along with results of surveys it conducted of its membership, indicating that NRTC members are experiencing continuing difficulties with the waiver process. As described in NRTC's response, DirecTV notified the General Managers of all local network affiliate stations on February 15, 2000, that NRTC, its members and affiliates would file waiver requests directly with the stations on behalf of their subscribers. DirecTV requested that the network affiliates give these waiver requests the same consideration as waiver requests submitted directly to the network affiliates by DirecTV.

¹¹ See *SHVIA* section 1008.

Notwithstanding this, waiver requests continue to be denied by the network affiliates for no other reason than the request did not come directly from DirecTV (*i.e.*, the satellite carrier) which the local networks affiliates appear to believe comports with the letter (if not the spirit) of the law.

10. It is unreasonable and contrary to the public interest to require subscribers served by NRTC, its members and affiliates to submit waiver requests via DirecTV. DirecTV has notified the network affiliates in writing that NRTC may file waiver requests on its behalf directly with the network affiliates. DirecTV further made it clear to the affiliates that NRTC's requests should be afforded the same consideration as requests by DirecTV itself. NRTC's requests, therefore, are being submitted with the consent of and "through" the satellite carrier, as required by the SHVIA, and there is no legitimate reason for the network affiliates to reject them out of hand. The stations' failure to honor NRTC's requests is manifest bad faith and contrary to law. Since the satellite carrier has specifically authorized the submission of waiver requests by NRTC, its members and affiliates, NRTC requests that the Commission direct the networks affiliates to accept and process those requests.

C. INDEPENDENT TESTING.

11. When a waiver request is denied, and the subscriber requests a test of signal intensity, the satellite carrier and the local network television station are to select a qualified and independent person to conduct the test. If the test shows that the satellite subscriber is able to receive a signal of at least Grade B, the satellite company will pay for the test. If the test reveals that the satellite subscriber cannot receive a Grade B signal, the television station will pay for the test. The *SHVIA* requires that the test be performed no more than 30 days after the subscriber submits the request. In the event that a satellite company and the television station are unable to

agree, the *SHVIA* requires the Commission to establish a process for selecting an unbiased person to conduct the test.

12. NRTC supports the model testing regime submitted by the Satellite Broadcasting and Communications Association ("SBCA"). Additionally, NRTC supports comments filed by DirecTV that the Commission should designate independent and neutral entities for testing if the satellite carrier and network broadcast station are unable to reach agreement on a person to conduct testing.¹² If necessary, such an entity or entities could be recommended by a joint working group consisting of satellite, broadcast and distributor representatives appointed by the Commission, following criteria established by the Commission.

13. NRTC also supports the suggestion of a rule extending test results to neighboring properties within a limited distance (perhaps 1/4 mile radius) from a property where testing fails to meet the requisite standard.¹³ Such a rule would streamline the testing requirement by limiting unnecessary and expensive testing, yet would still protect the legitimate interests of local broadcasters.

IV. CONCLUSION

14. While NRTC supports the Commission's proposal to improve the ILLR model by including certain clutter loss parameters, this effort is not likely to predict accurately whether subscribers actually receive an acceptable picture over-the-air. NRTC urges the Commission, in a separate inquiry, to honor its statutory obligation and examine the Grade B standard itself. In

¹² Comments of DirecTV, Inc. at pp. 9-10.

¹³ *Id.*

conjunction with the inquiry, the Commission should establish a new standard specifically for the purposes of the *SHVIA*. Failure to do so will render efforts to adopt an improved predictive model ineffective to determine whether viewers actually receive an acceptable picture over-the-air from local affiliates. NRTC also urges the Commission to require that network affiliates accept waiver requests directly from NRTC, its members and affiliates, since DirecTV has specifically authorized the submissions. Finally, NRTC supports the SBCA's model testing regime and the Commission's establishment of criteria for independent testers, the formation of a joint working group to identify testers, and streamlined testing requirements for households across the country.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cassandra L. Hall, do hereby certify that copies of the foregoing **Reply Comments of the National Rural Telecommunications Cooperative** were sent, via hand delivery, this 14th day of March, 2000, to the following:

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